

United States Courts
Southern District of Texas
FILED

MAY 08 2002 **LF**

Michael N. Milby, Clerk

CIVIL ACTION NO. H-01-3624
AND CONSOLIDATED CASES

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As discussed in Alliance Capital’s Memorandum in Support of its Motion to Dismiss, the Plaintiffs’ Consolidated Complaint for Violation of the Securities Laws, as it relates to Plaintiffs’ claims against Alliance Capital, should be dismissed because the Complaint fails to state a claim against Alliance Capital upon which relief can be granted. Section 15 of the Securities Act of 1933 (the “1933 Act”), 15 U.S.C. § 77o, was never intended to impose liability on a corporation merely because it employed a person who also independently acted as an outside director of an unaffiliated company. Further, in their Consolidated Complaint, Plaintiffs have failed to plead

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adequately that Alliance Capital had the power to control the actions of Frank Savage, as an outside director on Enron's Board, in connection with his decision as an outside director of Enron to sign a registration statement issued by Enron. Finally, if Section 15 were construed to impose employer liability on such a basis, corporations would have a powerful incentive to prohibit their executives from serving as independent directors of other companies, which construction would be against public policy.

II.

Accordingly, Alliance Capital respectfully requests the Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the Plaintiffs' Consolidated Complaint for Violation of the Securities Laws for Plaintiffs' failure to state a claim upon which relief can be granted for Plaintiffs' claims against Alliance Capital Management L.P. allegedly arising under the 1933 Act.

WHEREFORE, PREMISES CONSIDERED, Defendant, Alliance Capital Management L.P., respectfully requests the Court to grant its Motion to Dismiss and such other relief to which Alliance Capital may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the Defendant Alliance Capital Management, L.P.'s Motion to Dismiss Pursuant to Rule 12(b)(6) has been served on all counsel pursuant to the Court's April 10, 2002 Order on this 8th day of May, 2002.



Ronald E. Cook